

FCC MAIL SECTION  
Before the  
Federal Communications Commission  
Washington, D.C. 20554  
AUG 3 2 3-PM '94

MM Docket No. 94-87

DISPATCHED BY

In re Applications of

MUSIC File No. BPED-920128MG  
MINISTRIES, INC.  
(hereafter "MMI")

COMMUNITY File No. BPED-920930MB  
EDUCATION AND  
RELIGION BROADCASTING, INC.  
(hereafter "CERB")

For Construction Permit for a New  
Noncommercial Educational FM ("NCE-FM")  
Station on Channel 204A  
in Loogootee, Indiana

**HEARING DESIGNATION ORDER**

Adopted: July 15, 1994;

Released: August 2, 1994

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new NCE-FM station.

2. *Eligibility.* Section 73.503(a) of the Commission's Rules mandates that a NCE-FM broadcast station will be licensed only to a non-profit educational organization upon a showing that the station will be used in the advancement of an educational program. In order for the Commission to determine whether an applicant is eligible for an NCE-FM license as a nonprofit, educational organization, it must first state its educational program or objective and, secondly, it must show how its programming will be used in the furtherance of that objective.

3. Section II, Question 1 of FCC Form 340 asks the applicant to check whether it is a: "(a) governmental or public educational agency, board or institution; (b) private nonprofit educational institution; or (c) other." An applicant which checks (a) or (b) is generally presumed to have an educational program or objective and must demonstrate only the second part of the test, *i.e.*, how its programming will be used to further its educational objective. An applicant which checks (c) must specifically show how it meets both parts of the test. That is, it must show that it is in fact a nonprofit, educational organization, identify its educational objective, and then show how its programming will further that objective. Although CERB has checked (b), it has also modified its answer to specify that it is a: "(b) private nonprofit educational institution/organization/corporation" (emphasis added). Further, in its application (at Exh. A2), CERB states that "The applicant will provide educational and religion programming. The applicant will operate the station with educational,

entertainment, religious, news, weather, public affairs programming and announcements for the communities covered by the broadcast area. . . . The applicant will provide live and taped church services for the community." Also, CERB's programming narrative (Exh. B) indicates that it will provide some instructional programming through the local school system. *See also* Exh. A1 (letter from Superintendent of Schools). In addition, CERB's application contains a copy of a one-page Articles of Incorporation in which CERB's purpose is described as: "To provide educational and religion programming." Though the application thus indicates that the proposed programming will include educational matter, insufficient information is provided for us to determine whether CERB is either a nonprofit educational institution (Section II, Question 1(b)) or an otherwise qualified nonprofit educational organization proposing to advance an educational program (Section II, Question 1(c)) in compliance with 47 C.F.R. § 73.503. Accordingly, an appropriate issue will be specified.

4. *Share-time Arrangement.* Neither of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

5. *Late-Filed Amendment.* The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANTS  
CERB

AMENDMENTS FILED  
3/29/93.

6. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. **ACCORDINGLY, IT IS ORDERED.** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether CERB is either a nonprofit educational institution or an otherwise qualified nonprofit educational organization proposing to advance an educational program in compliance with 47 C.F.R. § 73.503.

2. To determine: (a) the number of other reserved channel non-commercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior noncommercial educational FM broadcast service.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petition for leave to amend filed by CERB (3/29/93) IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

## FEDERAL COMMUNICATIONS COMMISSION

Linda B. Blair, Assistant Chief  
Audio Services Division  
Mass Media Bureau